

Chapter 3

Environmental Defenders Offices

Introduction

3.1 This chapter outlines the history of the Environmental Defenders Offices (EDOs), the functions it undertakes and its funding arrangements.

3.2 This chapter draws on the evaluation of the EDOs in the Productivity Commission's 2014 report, *Access to Justice Arrangements*,¹ as well as evidence provided in the committee's submissions and at public hearings.

Environmental Defenders Offices

3.3 The EDO in New South Wales was founded in 1985, and was the first of the national network of environmental lawyers which unified in 1996. The national network of EDOs is governed by a managing committee, made up of members of the state and territory EDOs.²

3.4 Currently, there are eight state and territory community environmental law centres which form the EDOs of Australia.³ The work undertaken by the EDOs relate to:

- legal advice and representation;
- community legal education programs; and
- formulation of environmental policy and law reform.⁴

3.5 The EDOs are the only public interest environmental lawyers in Australia. As a result of this status the EDOs of Australia has argued that:

...access to environmental justice ultimately depends upon our continued capacity to deliver a range of specialist legal services to the community.⁵

3.6 The Productivity Commission, in its 2014 report on access to justice, noted that the EDOs spend the majority of their time on public education and public interest litigation:

1 Productivity Commission, *Access to Justice Arrangements*, Inquiry Report No. 72, September 2014.

2 EDOs of Australia, *Our Management Committee*, <http://www.edo.org.au/management> (accessed 16 April 2015).

3 EDO Victoria became Environmental Justice Australia as of 1 May 2014.

4 EDOs of Australia (formerly Australian Network of Environmental Defenders Offices Inc), *Submission 11*, p. 2.

5 EDOs of Australia, *Submission to the Productivity Commission on Access to Justice Arrangements*, p. 4.

...around one quarter of total EDO activities relate to law reform, with the remainder involving advice and education, and conducting public interest environmental litigation.⁶

3.7 The EDOs have argued that they provide a unique service to local communities through their education programs:

EDOs deliver services that are not provided by any other organisation. We play a critical role in ensuring that community members understand the laws and decisions that affect them, and that their involvement in decision-making is efficient and effective.⁷

3.8 EDOs have also played a significant role in public interest environmental litigation, which they noted is defined as:

...litigation undertaken by a private individual or community group where the dominant purpose is not to protect or vindicate a private right or interest, but to protect the environment.⁸

3.9 Their main criteria for assessing requests for legal assistance concern:

- whether the matter is one of environmental protection;
- whether it is in the public interest; and
- whether the applicant could otherwise afford private legal assistance.⁹

3.10 In their submission to the Productivity Commission, the EDOs provided a breakdown of their state and territory offices' activities (Figure 3.1):

Figure 3.1: Work undertaken by EDOs in 2012–13

	Advice	Litigation	Education	Law reform
EDO QLD	20%	50%	10%	20%
EDO SA	10%	50%	10%	30%
EDO ACT	30%	0%	30%	40%
EDO TAS	45%	15%	20%	20%
EDO NT	40%	5%	40%	15%

Source: Australian Network of Environmental Defenders Offices, *Supplementary Submission on Draft Productivity Commission report into Access to Justice Arrangements*, 2 July 2014, p. 5.

6 Productivity Commission, *Access to Justice Arrangements*, Vol. 2, No. 72, 5 September 2014, p. 712.

7 EDOs of Australia, *Submission 11, Attachment 1*, p. 2.

8 EDOs of Australia, *Submission 11, Attachment 1*, p. 4.

9 EDO Queensland, *Who we help*, <http://www.edoqld.org.au/who-we-help/> (accessed 8 April 2015).

3.11 Collectively, the EDOs currently employ 20 full-time legal staff and 17 non-legal and support staff.¹⁰

Funding arrangements

3.12 The EDOs receive funds through fees, donations, gifts and government grants and programs. EDOs of Australia commented that 'the funding received by each office fluctuates markedly from year to year, due to project-based funding, one-off philanthropic grants and the variable success of fundraising efforts and income from services'.¹¹

3.13 In addition, government funding arrangements for EDOs vary across their state and territory offices with each office receiving different levels of funding from their state or territory government and the Commonwealth. The Commonwealth has provided recurrent funding for over 18 years. Recurrent funding was around \$100,000 in 2014–15 for the EDOs through the Community Legal Service Program managed by the Attorney-General's Department.¹²

3.14 Commonwealth recurrent funding, as a proportion of funding as at 30 June 2013, was as follows:

- Queensland – 100 per cent;
- Northern Territory – 85 per cent;
- South Australia – 80 per cent;
- North Queensland – 75 per cent;
- Tasmania – 73 per cent;
- Australian Capital Territory – 56 per cent;
- Western Australia – 45 per cent; and
- New South Wales – 5.2 per cent.¹³

3.15 In addition to recurrent funding, the previous Commonwealth government provided supplementary funding of \$300,000 per year from 2013 through four-year funding agreements with the EDOs.¹⁴ While only a portion of the supplementary funding was received before the agreements were terminated at the end of 2013, the funding provided the means to increase services. The Northern Territory EDO (EDONT), for example, indicated that it had employed an additional solicitor. The additional capacity allowed the EDONT 'to provide a kind of outreach service for the

10 EDOs of Australia, *Answer to question on notice*, 21 April 2015 (received 19 May 2015), p. 1.

11 EDOs of Australia, *Answer to question on notice*, 21 April 2015 (received 19 May 2015), p. 1.

12 See EDO NSW, *Annual Report 2013–14*, p. 45; EDOWA, *Annual Report*, p. 3.

13 EDOs of Australia, *Answer to question on notice*, 21 April 2015 (received 19 May 2015), p. 2.

14 Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office, NSW, *Committee Hansard*, 21 April 2015, p. 1.

first time, highlighting the dramatic levels of unmet need for our services in remote NT communities'.¹⁵

3.16 The Attorney-General's Department indicated that the EDOs had received base (recurrent) and supplementary funding.¹⁶

Work of the Environmental Defenders Offices

3.17 One of the principal functions undertaken by EDOs is community legal education. EDOs produce fact sheets on a range of topics and bulletins providing updates on changes to laws and policies. They also run outreach programs in consultation with Indigenous communities in NSW, Western Australia and the Northern Territory.¹⁷

3.18 The EDOs have been involved in a number of high-profile environmental cases. The EDO Queensland, for example, has been involved in cases concerning the Springbrook rainforest, which resulted in the protection of rare and threatened species from a proposed development,¹⁸ and the Nathan Dam case, in which the Commonwealth Minister for the Environment was compelled to consider the flow-on impacts of a proposed dam in Central Queensland.¹⁹

3.19 Nationally, the EDOs have been involved in numerous actions on a range of environmental matters, including: mining and coal seam gas, native plants and animals, climate change and energy, Aboriginal communities, coastal marine and fisheries management, and planning development and heritage.²⁰

3.20 The EDOs of Australia commented that EDO advice 'redresses a significant imbalance between community members and comparatively well-resourced government authorities and private companies'.²¹

15 EDONT, *Annual Report*, p. 24.

16 Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department, *Committee Hansard*, 13 May 2015, p. 7.

17 EDOs of Australia, *Submission 11*, p. 2.

18 EDO Queensland, *Protecting Springbrook rainforest*, <http://www.edoqld.org.au/success-stories/protecting-springbrook-rainforest/> (accessed 10 April 2015).

19 EDO Queensland, *The Nathan Dam case: protecting the Reef and making legal history*, <http://www.edoqld.org.au/success-stories/the-nathan-dam-case-protecting-the-reef-and-making-legal-history/> (accessed 10 April 2015).

20 EDOs of Australia, *Court cases*, <http://www.edo.org.au/cases> (accessed 10 April 2015).

21 EDOs of Australia, *Submission 11*, p. 3.

Defunding of the Environmental Defenders Offices

3.21 In December 2013, the Mid-Year Economic and Fiscal Outlook (MYEFO) outlined cuts for Legal Policy Reform and Advocacy Funding including a \$10 million cut in funding over four years to the EDOs.²²

3.22 The Attorney-General's Department noted that the supplementary funding agreements entered into by the previous government included an immediate termination clause. This was executed immediately with the December 2013 MYEFO announcement. At this time, the EDOs were also notified that their ongoing base funding would not be renewed beyond its expiry date of 30 June 2014. The Attorney-General's Department commented that the recurrent funding was not terminated or cancelled; rather, the government had agreed to not continue this funding at the expiration of the current funding arrangement, that is, 30 June 2014.²³

3.23 The Attorney-General's Department commented that the defunding decision came from a need to achieve a set amount of savings in the legal assistance program, and that the EDOs had been identified as being a 'lesser priority' for funding. The EDOs were notified of this rationale for defunding.²⁴

3.24 The decision to defund the EDOs was relayed to them firstly through a phone call, and then in writing. An example of the letters is provided at Appendix 3. The letter from the Attorney-General's Department to the EDOs states that:

In this time of fiscal constraint, the Australian Government sees the provision of enhanced frontline legal services to disadvantaged members of the community as the first priority in facilitating access to justice...²⁵

3.25 Further, the letter sets out that the two streams of funding received by the EDOs will cease. The letter states that the government has decided to:

1. not extend the Service Agreement beyond its current term, which is due to expire on 30 June 2014, and
2. cancel the Grant Agreement in accordance with subclause 19.1 of the General Grant Conditions (the Conditions), which form part of the Grant Agreement (see paragraph headed 'Scope of this Agreement' of the Grant Details).

With respect to the cancellation of the Grant Agreement, we advise that due to this change in government policy the Commonwealth is cancelling the Grant Agreement effective immediately.²⁶

22 Australian Government, *Mid-Year Economic and Fiscal Outlook 2013–14*, December 2013, p. 119.

23 Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department, *Committee Hansard*, 13 May 2015, p. 7; see also p. 9.

24 Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department, *Committee Hansard*, 13 May 2015, p. 8.

25 Attorney-General's Department, *Answer to question on notice*, 13 May 2015 (received 27 May 2015).

3.26 On 26 March 2015, the Attorney-General announced a reversal of cuts to funding for legal aid providers, but specifically excluded the EDOs:

After considerable consultation with State and Territory Governments and service providers, it has been decided there will be no reduction in Commonwealth funding to Legal Aid Commissions, Community Legal Centres (except Environmental Defenders Offices) and Indigenous legal assistance for the next two years.²⁷

Response to defunding of EDOs

3.27 Many submitters expressed concern at the defunding of EDOs. The Australian Conservation Foundation stated:

Defunding the EDOs means Australians are less able to speak up for themselves, ensure that the environments they value are looked after, and keep political decision makers honest.²⁸

3.28 Another group of submitters provided the following view on the defunding of the EDOs:

It is appalling that the Abbott government allowed the mining industry lobby to persuade it to cut funding to the Environmental Defenders Office. The EDO is the only legal service dedicated to ensuring that decisions relating to the environment are lawful and fair, and to assist the community in understanding their legal obligations towards the environment and in abiding by planning regulatory frameworks. The role of the EDO in making submissions relating to proposed legislation is invaluable as they have years of experience, scientific and legal knowledge. That knowledge is unique and of enormous assistance to the governments of the day in their legislative role.

In cutting funding for the EDO the Abbott government has shown great naivety and cynicism and frankly, has displayed a clear disdain for people who will live longer than, or after, them. They are a government of aging men who demonstrably care nothing about the planet, its humanity or its creatures. They are opportunists for themselves personally and their corporate cohorts. They have mounted an unending attack upon the environment from every available angle.²⁹

26 Attorney-General's Department, *Answer to question on notice*, 13 May 2015 (received 27 May 2015).

27 Senator the Hon George Brandis, Attorney-General, and Senator the Hon Michaelia Cash, Minister Assisting the Prime Minister for Women, 'Legal aid funding assured to support the most vulnerable in our community', *Joint Press Release*, 26 March 2015.

28 Australian Conservation Foundation, *Submission 10*, p. 3.

29 Dr Mary MacGibbon, Ms Kate Watson and Ms Ingrid Strewe, *Submission 25*, p. 12.

Reasons for defunding

3.29 The EDOs disagreed with the argument for defunding put forward by the Attorney-General's Department in its letter to the EDOs, which stated that only frontline legal services would receive funding. The EDO in Western Australia (EDOWA) argued that 'the delivery of frontline legal services for disadvantaged Australians is precisely what EDOs provide'.³⁰

3.30 EDOWA noted that its clients include Indigenous Australians seeking to protect traditional lands from mining, and local farmers and landowners. EDOWA argued that they provide a unique service:

These clients often cannot get specialised legal advice and representation on environmental law issues elsewhere. In many instances, EDOs are the only legal service providers to which such citizens can turn for help in understanding their rights and the options available to them to protect their health, prosperity and the environment.³¹

3.31 Other submitters also noted the important work undertaken by EDOs. The group of environmental organisations, for example, stated:

The Australian Network of Environmental Defenders Offices (ANEDO) has provided important public interest environment law services for over 25 years, when the NSW office was first established. ANEDO plays an important role in providing legal advice to the community on public interest environment matters, and representing third parties in court proceedings. The ANEDO offices are made up of lawyers, scientists and other professionals and support staff, who provide professional, expert and independent legal advice to individuals and community groups within clear public interest guidelines.

ANEDO's work has helped to protect coastal areas, private land, rivers and catchments, Aboriginal culture and land, and native flora and fauna, signifying the broad extent to which the organisation affects local people and communities.³²

3.32 In evidence to the committee, the Attorney-General's Department indicated that it was not aware of any analysis of the work of EDOs undertaken prior to the MYEFO announcement. Rather, the only analysis was 'about options that might be available to the government in achieving the financial savings that it was requiring'.³³

30 Environmental Defenders Office of Western Australia, 'Commonwealth continues campaign to discontinue EDO funding', *EDO News*, Vol 21, No. 1, Autumn 2015, p. 4.

31 Environmental Defenders Office of Western Australia, 'Commonwealth continues campaign to discontinue EDO funding', *EDO News*, Vol 21, No. 1, Autumn 2015, p. 4.

32 Nature Conservation Council of NSW; Environment Tasmania; Conservation Council of WA; Queensland Conservation Council; Environment Victoria; Conservation Council ACT Region; Environment Centre NT; Conservation Council of SA, *Submission 37*, p. 11.

33 Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department, *Committee Hansard*, 13 May 2015, p. 8; see also Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department, *Committee Hansard*, 13 May 2015, p. 11.

In answer to a question on notice in relation to this matter, the Attorney-General's Department added:

The department provided analysis and advice on how the required level of savings could be achieved. This included the fact that removing all EDO funding would deliver a total of \$11.25 million over four years.³⁴

3.33 The EDOs noted that the decision to defund the EDOs was made before the completion of the Productivity Commission's review of access to justice.³⁵

3.34 The EDOs also commented on the reinstatement of funding for community legal centres which specifically excluded EDOs. Ms Rachel Walmsley, EDO NSW, noted that the EDOs 'are very happy that the funding has been restored more broadly to the sector because community legal centres do really important work', however, she indicated that no justification for the continued defunding of EDOs had been provided. The EDOs had sought to meet the Attorney-General to discuss this, however, they had not been able to do so.³⁶

3.35 It was also suggested in evidence that the defunding of EDOs may have been influenced by factors other than the need to find financial savings. Ms Jo-Anne Bragg, EDO Queensland, commented:

In terms of the earlier question, as to why EDOs had been defunded, I might venture that we are often very successful at helping clients use the law to protect the environment and to protect communities. Many people applaud that as part of access to justice in a fair and democratic society, but certain interest groups might prefer that communities did not have access to those sorts of legal resources. We feel we are a very important part of the environmental access to justice for communities across the country.³⁷

3.36 Ms Walmsley concluded that the defunding, and then failure to reinstate funding for EDOs, sent two signals:

It is saying that environmental protection is somehow an indulgence or a luxury rather than [actually fundamental] to Australia's economy, society and long-term wellbeing. Secondly, it sends a message that if communities wish to protect their environment against powerful interests including breaches and wrongful decision making that they are on their own.³⁸

34 Attorney-General's Department, *Answer to question on notice*, p. 7.

35 Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office, NSW, *Committee Hansard*, 21 April 2015, p. 7.

36 Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office, NSW, *Committee Hansard*, 21 April 2015, p. 5.

37 Ms Jo-Anne Bragg, Principal Lawyer, Environmental Defenders Office, Queensland, *Committee Hansard*, 21 April 2015, p. 9.

38 Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office, NSW, *Committee Hansard*, 21 April 2015, p. 6.

Impact of defunding of EDOs

3.37 The committee received evidence on the consequences that the defunding of the EDOs would have for the organisations and the work that they undertake. The EDOs of Australia pointed to the importance of stable funding for the long-term delivery of services. It stated that:

Recurrent funding has been the only secure basis for forward planning and stable, long-term service delivery. In the absence of a stable funding source, offices are required to dedicate considerable time and resources in order to generate income, often at the expense of direct service delivery.³⁹

3.38 Without recurrent funding, the EDOs are facing significant financial constraints which have implications for staffing. The EDOs of Australia indicated that staffing numbers are likely to decrease significantly in the next 12 months as the impact of the funding cuts lead to office closures and reduced services.⁴⁰ EDOWA also commented on changes to staff and stated in its Annual Report that it:

...had to abandon the idea of a northern office and reduce planned staff...defunding left the EDOWA with 1.4 Full Time Equivalent lawyers rather than the 2.6 FTE lawyers planned for February 2014.⁴¹

3.39 These financial constraints have been exacerbated in some jurisdictions by decreases in state and territory governments funding to the EDOs. For example, funding for the EDOWA was cut from the state budget, as announced in May, with funding reallocated to the Employment Law Centre.⁴² State government funding for the EDOs in the Northern Territory and South Australia has been withdrawn and these offices face imminent closure, while the Tasmanian and Australian Capital Territory offices face closure by the end of the year.⁴³

3.40 The financial situation of EDONT was highlighted in its 2014 Annual Report which stated:

Firstly, we feel it important to bring the reader's attention to the fact the EDONT's auditor's report highlights "the existence of material uncertainty over the Association's ability to continue as a going concern and therefore may be unable to realise its assets and discharge its liabilities in the normal

39 EDOs of Australia, *Answer to question on notice*, 21 April 2015 (received 19 May 2015), p. 1.

40 EDOs of Australia, *Answer to question on notice*, 21 April 2015 (received 19 May 2015), p. 1.

41 EDOWA, *Annual Report 2014*, p. 3.

42 Daniel Weber, 'Government funding pulled from Environmental Defender's Office without explanation', *ABC News*, 26 May 2015, <http://www.abc.net.au/news/2015-05-26/funding-of-environmental-defenders-office-withdrawn/6498990> (accessed 15 June 2015).

43 PM with Mark Colvin, *Environmental Defender's Office funding cuts linked to advocacy work on controversial projects*, 27 May 2015, <http://www.abc.net.au/pm/content/2015/s4243663.htm> (accessed 15 June 2015); EDO ACT, *EDO ACT Faces Closure without Budget Support*, http://www.edoact.org.au/edo_act_faces_closure_without_budget_support (accessed 15 June 2015); see also Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office, NSW, *Committee Hansard*, 21 April 2015, p. 3.

course of business". This is of course a direct result of the Federal Government's withdrawal of the EDONT's funding and it is well recognised that without alternative sources of funding, the EDONT is likely to close at the end of this coming financial year.⁴⁴

3.41 EDONT was scheduled to close its doors on 30 June 2015 in the absence of additional funding. The EDONT indicated that it had attempted to raise funding from the Northern Territory Government without success. The Law Society Northern Territory had provided funding and some \$10,000 was raised through a crowd-funding campaign prior to Christmas 2014. Nevertheless, it appears that the office is not sustainable after June 2015.⁴⁵

3.42 Ms Jess Feehely, EDO Tasmania, commented that the EDOs in other jurisdictions 'have slightly more positive outlooks based on funding they have been able to continue to receive from their state governments'.⁴⁶ EDO Queensland for example, commented that it was hoping to get state funding and it was surviving on temporary project funding and public donations. As a consequence, EDO Queensland has had to severely restrict the number and detail of advice it provides and has not been able to do its normal rural outreach and education.⁴⁷

Environmental and community implications of defunding

3.43 The impact of environmental harm on communities was noted by the Productivity Commission:

The rationales for government support for environmental matters are well recognised. The impact of activities or actions that cause environmental harm typically extend beyond a single individual to the broader community. For example, inappropriate developments by governments or the private sector that reduce air quality, water quality or the amenity of an area can impose costs on all residents in that area. Costs might include poor health outcomes or decreased land values.⁴⁸

3.44 The EDO office in Northern Queensland highlighted its role in providing a voice for Australian communities through access to justice as well as, more broadly, the protection of the environment. According to it, the defunding of the EDOs:

44 EDONT, *Annual Report 2014*, p. 24.

45 Mr David Morris, Principal Lawyer, Environmental Defenders Office, NT, *Committee Hansard*, 21 April 2015, p. 3; see also p. 8.

46 Ms Jess Feehely, Principal Lawyer, Environmental Defenders Office, Tasmania, *Committee Hansard*, 21 April 2015, p. 3.

47 Ms Jo-Anne Bragg, Principal Lawyer, Environmental Defenders Office, Queensland, *Committee Hansard*, 21 April 2015, p. 3; see also p. 8.

48 Productivity Commission, *Access to Justice Arrangements*, Vol. 2, No. 72, 5 September 2014, p. 711.

Defunding the EDOs means Australian communities are less able to speak up for themselves, less able to ensure that the environments they value are looked after, and less able to keep political decision makers honest.⁴⁹

3.45 The impact that defunding the EDOs can have on access to justice has been noted by the EDOs of Australia. According to the EDOs, environmental laws 'can help to address social disadvantage and fairness in our legal system', as:

...environmental issues disproportionately affect members of marginalised or lower socio-economic groups who are exposed to inappropriate developments which lower air quality, water quality or the amenity of an area. This may have flow-on effects leading to ill-health, reduced land values, disadvantage and disempowerment.⁵⁰

3.46 Ms Walmsley, EDO NSW, added:

As recently recognised by the Productivity Commission, we have a very crucial role in terms of access to environmental justice. Without EDOs there really is no community legal centre, no government service that actually provides the kind of information and assistance that we provide. As I was saying in the opening statement, our clients include a really diverse cross-section. We have farmers, Aboriginal clients and governments who come to us for advice. We are really the only independent non-government source of information on environmental law and we are crucial for access to justice.⁵¹

3.47 The need for ensuring access to justice on environmental law issues was highlighted by EDO North Queensland, which commented that 'this is particularly serious when many are suffering the consequences of the streamlined approvals process created by the Queensland government's aggressive campaign of slashing "green tape"'.⁵²

3.48 This view was supported by other submitters with the network of state-level conservation councils and organisations asserting that:

Without ANEDO's [Australian Network of Environmental Defenders Offices] legal services many Australians could not afford to get legal advice or mount a legitimate legal challenge against large companies or governments over major development projects which threaten their local communities and environment.⁵³

49 EDO Northern Queensland, *Submission 23*, p. 1.

50 EDOs of Australia, *Submission to the Productivity Commission on Access to Justice Arrangements*, p. 4.

51 Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office, NSW, *Committee Hansard*, 21 April 2015, p. 4.

52 Environmental Defenders Office of Northern Queensland, *Submission 23*, p. 3.

53 Nature Conservation Council of NSW, Environment Tasmania; Conservation Council of WA, Queensland Conservation Council, Environment Victoria, Conservation Council ACT Region, Environment Centre NT, Conservation Council of SA, *Submission 37*, p. 11.

3.49 Ms Kate Watson also argued that the EDOs perform a valuable service for the Australian community:

Apart from the services to the community, the EDO is also an important institution of our democracy. For a government to withdraw the means by which the community can lawfully question or challenge decisions by that government about our environment takes us fast in a direction which is undemocratic.⁵⁴

3.50 Ms Elizabeth Quinn, Director, Community Legal Services Section in the Attorney-General's Department, noted that no replacement service to provide free legal advice on environmental matters received Commonwealth funding.⁵⁵ However, Ms Quinn expressed the view that there would be nothing to 'prevent a generalist community legal centre from assisting someone'.⁵⁶

Frivolous or tenuous litigation

3.51 A further matter raised in evidence was the role of the EDOs in reducing frivolous or tenuous litigation. For example, Ms Watson stated:

Both the Abbott government and the New South Wales state government failed to recognise that EDOs not only serve the community and the environment; they also save the government money by advising potential litigants about the law, their prospects and avenues other than courts that they can use to bring attention to any grievances. EDOs thereby unclog the courts of unrepresented individuals and communities who would otherwise take court time to run cases that were either not well founded or had no basis in law.⁵⁷

3.52 The EDOs also argued that they play 'a critical role in reducing the number of frivolous or tenuous litigation activities being pursued, and in improving the efficiency of matters which do proceed'.⁵⁸

3.53 The EDOs highlighted the process they use when determining whether to proceed with a case. They stated that they:

54 Ms Kate Watson, *Committee Hansard*, 21 April 2015, p. 19.

55 Ms Elizabeth Quinn, Director, Community Legal Services Section, Legal Assistance Branch, Access to Justice Division, Attorney-General's Department, *Committee Hansard*, 13 May 2015, p. 9.

56 Ms Elizabeth Quinn, Director, Community Legal Services Section, Legal Assistance Branch, Access to Justice Division, Attorney-General's Department, *Committee Hansard*, 13 May 2015, p. 9.

57 Ms Kate Watson, *Committee Hansard*, 21 April 2015, p. 19; see also Michelle Paine, 'Women's legal service cash crisis', *Mercury*, 16 June 2014, <http://www.themercury.com.au/news/tasmania/womens-legal-service-cash-crisis/story-fnj4f7k1-1226955316168> (accessed 29 April 2015).

58 Australian Network of Environmental Defenders Offices, *Supplementary Submission on Draft Productivity Commission report into Access to Justice Arrangements*, 2 July 2014, p. 6.

...undertake a rigorous assessment of prospects (often in consultation with an experienced barrister), and ensure that clients are aware of both the potential risks and the evidentiary burden involved in the litigation.⁵⁹

3.54 The EDOs pointed out that while they provide advice on a number of matters, they run very few cases. They noted that in 2012–13, they provided 1,288 phone advices and 193 written advices, but ran only 19 public interest cases.⁶⁰

3.55 The Productivity Commission noted, in its 2014 report, that 'in the past five years, no cases in which EDO offices were engaged have been dismissed on the basis that the case was frivolous or vexatious'.⁶¹

Committee comment

3.56 The committee acknowledges the vitally important role that EDOs have undertaken over many years. The EDOs have empowered communities through education about their legal rights regarding the environment and the provision of advice on legal matters.

3.57 The EDOs also play a significant role in providing access to justice where it is in the public interest for environmental matters to be pursued by those who cannot afford private legal representation. By providing this important legal assistance, the EDOs serve to reduce frivolous litigation by taking very few matters to court. The committee notes the finding of the Productivity Commission that, in the past five years, no cases in which the EDOs were engaged were dismissed on the grounds that they were frivolous or vexatious.⁶²

3.58 The committee is concerned that without the EDOs, communities and individuals across Australia will not be able to access legal assistance or legal advice on matters that directly affect their local environment.

3.59 The committee heard that the future is bleak for the EDOs. Without reinstatement of Commonwealth funding, all EDO offices now face an uncertain future with some facing closure or are reducing the services they provide. The environment is a public good and those who seek to protect it should not have to rely on the donations or indeed crowd-funding.

3.60 The reasons given by the government for the defunding of the primary avenue communities have to access environmental legal aid are not compelling, particularly as there appears to have been no analysis by the Attorney-General's Department on the environmental and social impact of the defunding. Further, no analysis has been

59 Australian Network of Environmental Defenders Offices, *Supplementary Submission on Draft Productivity Commission report into Access to Justice Arrangements*, 2 July 2014, p. 6.

60 Australian Network of Environmental Defenders Offices, *Supplementary Submission on Draft Productivity Commission report into Access to Justice Arrangements*, 2 July 2014, p. 5.

61 Productivity Commission, *Access to Justice Arrangements*, Vol. 2, No. 72, 5 September 2014, p. 713.

62 Productivity Commission, *Access to Justice Arrangements*, Vol. 2, No. 72, 5 September 2014, p. 713.

undertaken on the impact the defunding will have on the court system, as the EDOs have acted as a filter for frivolous or vexatious litigation.

3.61 While acknowledging the financial constraints faced by the Commonwealth government, the committee considers that the long-term cost to communities and to the environment will far outweigh the short-term financial gains achieved by the defunding of the EDOs.

Recommendation 3

3.62 The committee recommends that the Commonwealth Government establish new funding agreements for the Environmental Defenders Offices which reinstate the recurrent funding previously provided.

**Senator Anne Urquhart
Chair**